

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE MIDDLE DISTRICT OF ALABAMA
 3 EASTERN DIVISION

4
 5 DAVID DAVIS,
 6 Plaintiff,
 7 vs. CASE NO. 3:06-CV-0054-VPM
 8 CITY OF PHENIX CITY, ALABAMA,
 9 et al.,
 10 Defendants.

11 *****
 12
 13 DEPOSITION OF KRISTIN H. KENNEDY, taken
 14 pursuant to stipulation and agreement before Shannon
 15 M. Williams, Certified Court Reporter and
 16 Commissioner for the State of Alabama at Large, in
 17 the offices of City Hall, 601 12th Street, Phenix
 18 City, Alabama, on Wednesday, November 7, 2007,
 19 commencing at approximately 11:12 a.m. EST.
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 21 *****
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1 APPEARANCES

2 FOR THE PLAINTIFF:

3 THOMAS A. WOODLEY
 4 Woodley & McGillivray
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 6 Suite 400
 7 Washington, D.C. 20005

8 FOR THE DEFENDANTS:

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 10 112 13th Street
 11 P.O. Box 3380
 12 Phenix City, Alabama 36868-3380

13 JAMES R. MCKOON, JR.
 14 McKoon & Associates
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 16 P.O. Box 3220
 17 Phenix City, Alabama 36868-3220

18 ALSO PRESENT:

19 Cole Dugan
 Wallace Hunter
 20 H.H. Roberts

21 EXAMINATION INDEX

22 BY MR. WOODLEY

23 4

24 EXHIBIT

25 STIPULATIONS

1 It is hereby stipulated and agreed by and
 2 between counsel representing the parties that the
 3 deposition of KRISTIN H. KENNEDY is taken pursuant
 4 to the Federal Rules of Civil Procedure and that
 5 said deposition may be taken before Shannon M.
 6 Williams, Certified Court Reporter and Commissioner
 7 for the State of Alabama at Large, without the
 8 formality of a commission; that objections to
 9 questions other than objections as to the form of
 10 the questions need not be made at this time but may
 11 be reserved for a ruling at such time as the
 12 deposition may be offered in evidence or used for
 13 any other purpose as provided for by the Federal
 14 Rules of Civil Procedure.

15 It is further stipulated and agreed by and
 16 between counsel representing the parties in this
 17 case that said deposition may be introduced at the
 18 trial of this case or used in any manner by either
 19 party hereto provided for by the Federal Rules of
 20 Civil Procedure.

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1 KRISTIN H. KENNEDY

2 The witness, having first been duly sworn
 3 or affirmed to speak the truth, the whole truth and
 4 nothing but the truth, testified as follows:

5 EXAMINATION

6 BY MR. WOODLEY:

7 Q. Could you please state your full name for
 8 the Record?

9 A. Kristin, K-R-I-S-T-I-N, Helen, H-E-L-E-N,
 10 Kennedy, K-E-N-N-E-D-Y.

11 Q. Ms. Kennedy, my name is Tom Woodley. I'm
 12 one of the attorneys that represents David Davis in
 13 this court action that's been filed against the City
 14 of Phenix City and also against Chief Hunter and
 15 City Manager Roberts. Let me ask you some
 16 preliminary questions. Have you ever had your
 17 deposition taken before in another case?

18 A. Yes, sir.

19 Q. So are you generally familiar with the
 20 procedures we will be following here today?

21 A. Somewhat.

22 Q. Okay. Fair enough. Couple of points. If
 23 at any time you don't hear or understand one of my
 24 questions, stop me immediately and let me know that;
 25 I'll be happy to repeat or rephrase the question.

1 Do you understand that?
 2 A. Yes, sir.
 3 Q. And this reporter will be taking down
 4 everything we say today and then she will have a
 5 chance to put it in transcript form which, if you
 6 want to, you can review that to make sure it's
 7 accurate. Do you understand that?
 8 A. Yes, sir.
 9 Q. When I ask a question, you'll have to wait
 10 until I finish my question to begin your answer so
 11 we have an accurate transcript.
 12 A. Okay.
 13 Q. And, of course, you're under oath so you're
 14 obligated to tell the truth. Do you understand
 15 that?
 16 A. Yes, sir.
 17 Q. Why don't you, at least with the years,
 18 trace your career when you first started here in the
 19 fire department and how you moved up the chain of
 20 command.
 21 A. In 1989, I was hired as a firefighter and
 22 remained a firefighter until, I think, the year 1998
 23 or '99, was promoted to sergeant or driver engineer;
 24 2002, I believe I was promoted to captain; and then
 25 2005, promoted to assistant chief and reclassified

5 he was an employee with the City of Phenix City Fire
 6 Department.
 7 Q. Did you know he was an eight-year veteran
 8 before he was terminated about a year and a half
 9 ago?
 10 A. I couldn't accurately tell you how long he
 11 had been with the fire department, no, sir.
 12 Q. Do you have an opinion as to what kind of
 13 job performance Mr. Davis had when he was working
 14 within the fire department?
 15 A. No, sir. Seeing as how I didn't really
 16 work on a continuous basis with Mr. Davis, I
 17 couldn't tell you personally what type of job
 18 performance he displayed, no, sir.
 19 Q. Okay. And in light of that, I take it you
 20 would not be able to tell me if you thought he was a
 21 good firefighter or bad firefighter or disruptive
 22 influence in the fire department? You just are not
 23 in a position to comment on those issues, I take it?
 24 A. The only issue that I can comment on is
 25 concerning an issue where I took disciplinary action
 against Mr. Davis. I can talk to you about that.
 But other than giving you an accurate account of his
 job performance, no, sir, I cannot do that.
 Q. So you had occasion on one time to

1 as a battalion chief. Also, assistant chief and
 2 battalion chief rank have the job title as fire
 3 marshal.
 4 Q. What's your current position?
 5 A. Fire marshal/battalion chief. That's the
 6 rank I have.
 7 Q. Are you responsible for fire prevention?
 8 A. Yes, sir.
 9 Q. So that's -- that position is not a
 10 frontline fire response, is it?
 11 A. No, sir. I'm called if I'm needed.
 12 Q. What kind of shifts do you work?
 13 A. Eight hours.
 14 Q. Eight-hour shifts?
 15 A. Yes, sir. Monday through Friday.
 16 Q. Have you ever had any supervisory
 17 responsibility over David Davis when he was employed
 18 in the fire department?
 19 A. Can't say as I have.
 20 Q. Have you ever been asked for your input or
 21 recommendation concerning evaluating Mr. Davis's job
 22 performance within the fire department?
 23 A. No, sir.
 24 Q. I take it you know David Davis, correct?
 25 A. I know of Mr. Davis, yes, sir. I know that

6 discipline Mr. Davis?
 7 A. Yes, sir, I did.
 8 Q. Were you his supervisor at the time?
 9 A. No, sir, I was not his direct supervisor.
 10 But being an officer of the department, when he
 11 became disruptive in the meeting that we were
 12 holding with his shift, his actions were directed at
 13 me. So at that point, based on his actions and his
 14 gestures and his behavior in front of his peers as
 15 well as my peers, I took disciplinary action against
 16 him.
 17 Q. And what discipline did you --
 18 A. I performed a written warning and it was
 19 taken up the chain of command through the personnel
 20 office -- personnel director, Mrs. Goodwin. Then we
 21 had a meeting with all of us and explained the
 22 written warning to Mr. Davis.
 23 Q. Was he suspended?
 24 A. I'm going to be quite frank with you and
 25 tell you at that point I don't know what his
 punishment was. I don't enforce that. All I could
 do was handle the situation that occurred, and
 whatever disciplinary action was taken against him
 was handled beyond me.
 Q. Do you remember how long ago that was?

1 A. Yes, sir. I believe it was August of '05.
 2 Q. So a couple years ago?
 3 A. Yes, sir.
 4 Q. And do you remember who was at the meeting
 5 when you became concerned?
 6 A. The entire shift that Mr. Davis worked on.
 7 And I cannot recall everyone there. I can tell you
 8 that myself, Chiefs Johansen, Jackson, and Hanson
 9 were present.
 10 Q. But you couldn't identify the other
 11 firefighters who were present?
 12 A. No, sir. I really couldn't. I -- not
 13 unless you told me who was there.
 14 Q. Okay. Give me the details of the incident
 15 or situation which troubled you.
 16 A. Okay. We were conducting a meeting, all
 17 three assistant chiefs and myself being a staff
 18 person. We were there to talk to every shift
 19 concerning a possible new work schedule when, during
 20 the meeting --
 21 Q. What was the new work schedule that was
 22 being suggested or discussed?
 23 A. Well, that we would possibly -- they would
 24 possibly -- their hours may be different other than
 25 24-hour shifts.

1 Q. Eight-hour shifts?
 2 A. Possibly. But nothing had been told to us
 3 as far as an exact hour. No, sir, I don't know
 4 that. So we --
 5 Q. On that -- if I may interrupt you, please.
 6 Were the firefighters in favor of having their
 7 shifts changed or were they opposed to it generally?
 8 A. Well, I can't really tell you that. I
 9 don't know what was in their mind.
 10 Q. What about Davis? Was he in favor of
 11 changing the shift schedule or opposed to it?
 12 A. Well, I can tell you based on the comment
 13 that he made, it was obvious that he possibly didn't
 14 like what he was hearing.
 15 Q. What was his comment?
 16 A. "Well, do it and stop punking me out."
 17 Q. I'm not sure I understand that.
 18 A. I didn't understand it either, sir.
 19 Q. Was he directing that comment at you and/or
 20 the others?
 21 A. It was directed straight at me when he rose
 22 up out of his chair, bowed his chest out, hit his
 23 self in the chest and said, "well, do it and stop
 24 punking me out."
 25 Q. Now, why was he directing that comment and

9 gestures at you? Were you running the meeting?
 1 2 Were you suggesting a change in the shifts or what?
 3 A. No, I wasn't running the meeting. The
 4 meeting was held with all of us so that everybody
 5 got the same message at the same time and no one
 6 could say, well, that's not what we were told. But
 7 no, sir. I think all of us had input into the
 8 discussion. It was just at that moment his comments
 9 were directed at me.
 10 Q. Did you say something immediately before
 11 that which caused him to direct his comments at you?
 12 A. I may have.
 13 Q. Do you remember what you said?
 14 A. No, sir. But what I'm saying is, is that
 15 at the time, whatever was said, his comment was
 16 directed right at me. And the three assistant
 17 chiefs -- as a matter of fact, I was very shocked
 18 and surprised, and I asked the three assistant
 19 chiefs did they see and hear the same thing that I
 20 did, and they said, most definitely.
 21 So at that point, I took action against
 22 Mr. Davis. I don't feel, as an officer of this
 23 department, that he nor anyone else should have the
 24 ability to act that way. I've never acted that way
 25 in a formal setting with my supervisors and I was

10 1 not going to allow that to happen to myself.
 2 Q. Did you interview any of the other
 3 firefighters who attended the meeting in connection
 4 with the Davis comments or gestures?
 5 A. No, sir. No, sir.
 6 Q. Do you know if Mr. Davis appealed the
 7 discipline that was imposed on him as a result of
 8 that situation?
 9 A. Yes, sir. We went to the Personnel Review
 10 Board.
 11 Q. What was the end result of that?
 12 A. The Personnel Review Board upheld the
 13 decisions the city made.
 14 Q. Do you know who appoints the members of the
 15 Personnel Review Board?
 16 A. No, sir. I know they are members made up
 17 of the community.
 18 Q. Do you know if the shift schedule was
 19 actually changed after that meeting?
 20 A. No, sir. I think they continued to work
 21 24 hours as they do now.
 22 Q. Have you ever been a member of the union?
 23 A. I was briefly a member of the Phenix City
 24 Firefighters' Association, and I'll explain
 25 basically why. I was pretty much harassed on my